

FILED

IN THE UNITED STATES DISTRICT COURT,
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

2009 MAR 23 P 2:45

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

MONEC HOLDING AG,

Address:

Galgenfeldweg 18
CH-Berne
Switzerland,

Plaintiff,

v.

APPLE INC.,

Address:

1 Infinite Loop
Cupertino, California 95014,

Defendant.

Civil Action No. 1:09cv312
LMB/JFA

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Monec Holding AG ("MONEC"), by and through its undersigned counsel, as and for its Complaint for patent infringement, unfair trade practices, monopolization and tortious interference with prospective business advantage (the "Complaint") against defendant *Apple Inc.* ("Apple"), states as follows:

THE PARTIES

1. Plaintiff MONEC is a corporation organized and existing under the laws of Switzerland with a principal place of business in Berne, Switzerland. Through its investments, MONEC is in the business of developing and marketing equipment for the transmission of data

to mobile electronic communication systems, managing and utilizing patents in this area and awarding licenses.

2. Upon information and belief, Defendant Apple Inc. is a California corporation with worldwide headquarters in California and has a regular and established business in Arlington, VA. Defendant has and is doing business throughout the United States and within this judicial district.

JURISDICTION

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 271 et seq. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §§ 1400(b) as the Defendant is doing business in this judicial district.

NATURE OF THE COMPLAINT

5. This is an action for patent infringement, unfair trade practices, monopolization and tortious interference with prospective business advantage.

FACTS COMMON TO ALL COUNTS

6. On January 1, 2002, United States Patent No. 6,335,678 (the “ ‘678 Patent”), entitled ELECTRONIC DEVICE, PREFERABLY AN ELECTRONIC BOOK, duly and legally issued to Theodor Heutschl. MONEC is owner by assignment of the ‘678 Patent and has the exclusive right to enforce the ‘678 Patent against Defendant. A true copy of the ‘678 Patent is annexed hereto as Exhibit A.

7. MONEC’s patent remains in force and if all maintenance fees are paid will expire on February 26, 2018.

8. Defendant Apple is a large company with operations in the United States and is engaged in the business of marketing an extensive array of electronic devices. Upon information and belief, Apple is well aware of existing patents in this area and licensing requirements, and was aware of U.S. Patent No. 6,335,678 in particular.

9. Upon information and belief, Apple manufactures, markets and sells the iPhone (“iPhone”).

10. The Apple iPhone infringes one or more claims of the ‘678 Patent, including independent claim 1.

11. The Apple iPhone has an integrated 3.5 inch (diagonal) widescreen Multi-Touch display.

12. The Apple iPhone has a built-in rechargeable lithium-ion battery

13. The Apple iPhone has a SIM card, SIM card Tray and is supplied with a SIM eject tool.

14. The Apple iPhone allows a user to read a regular book.

15. The Apple iPhone in one or more models currently communicates over a cellular GSM/GPRS/EDGE/UMTS network, Bluetooth network, and a Wi-Fi (802.11b/g) network .

16. The Apple iPhone operates on a radio network of at least one of 850, 1800, 1900, and 2100Mhz.

17. Apple supports and regulates third party development of software for the iPhone.

18. Apple provides developers with a Software Development Kit (SDK) to develop native applications.

19. Apple controls distribution of the applications on their App Store.

20. Loading a developed application onto the iPhone requires payment of a development connection membership fee to Apple.

21. Apple makes books and book applications accessible through Wi-Fi and cellular networks from their App Store

22. Apple advertises reading books using an application developed for just that purpose.

23. The Apple iPhone display has dimensions such that one page of a book can be displayed at a normal size.

COUNT 1
(Infringement of United States Patent No. 6,335,678)

24. Plaintiff repeats the allegations contained in Paragraphs 1 through 23 as though fully set forth herein.

25. Upon information and belief, Apple has been, still is, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '678 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products and services, including, but not limited to, its Apple iPhone, alone and in combination with other Apple products and services, within this jurisdiction and elsewhere without license of the '678 Patent.

26. Upon information and belief, Apple's infringement of the '678 Patent has been and continues to be willful, entitling MONEC to enhanced damages pursuant to 35 U.S.C. § 284.

27. As a result of Apple's infringement of the '678 Patent, MONEC has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

28. Unless an injunction is issued enjoining Apple and its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with it, from infringing the '678 Patent, MONEC will be irreparably harmed.

29. MONEC has no adequate remedy at law.

30. Upon information and belief, with full knowledge of the '678 Patent, Apple willfully and wantonly infringed the '678 Patent in deliberate and intentional disregard of MONEC's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MONEC prays for the following relief:

A. that a judgment be entered declaring that Apple has infringed, is infringing, has induced and is inducing, and has contributed and is contributing to the infringement of valid and enforceable U.S. Patent No. 6,335,678 (the "Patent in Suit");

B. that Apple, its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, who receive actual notice hereof, be preliminarily and permanently enjoined from further infringement, inducing infringement, and contributing to infringement of the Patent in Suit;

C. that damages be awarded in favor of MONEC and against Apple sufficient to fully compensate MONEC for Apple's infringement of the Patent in Suit, including lost profits and/or reasonable royalties, and an assessment of prejudgment interest and post-judgment interest;

D. that a judgment be entered finding Apple's infringement of the Patent in Suit to be and have been willful, justifying an award of enhanced damages pursuant to 35 U.S.C. § 284;

E. that a judgment be entered trebling the compensatory damages due MONEC;

F. that an order be entered declaring that this action is an exceptional case under 35 U.S.C. § 285 and that MONEC is entitled to recover its reasonable attorneys' fees, costs and expenses upon prevailing in this action and other relief both legal and equitable to which it may be justly entitled;

G. that an order be entered: (1) directing Apple to file with this Court and serve upon MONEC within 30 days of service of the injunction, a report, in writing and under oath, setting forth in detail the manner in which Apple has complied with the injunction and any further orders of the Court; (2) directing Apple to account for all gains, profits, benefits and monies realized as a result of its wrongful conduct; and (3) upon production of such accounting, rendering judgment against Apple for the amount shown due and the cost of accounting; and

H. Such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

Respectfully submitted:

By: 

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